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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,202	08/31/2001	John Brooks Smith	7152	4500

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JOHNS MANVILLE INTERNATIONAL, INC  
Legal Department  
P.O. Box 5108  
Denver, CO 80217

EXAMINER

RHEE, JANE J

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 09/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/945,202

Applicant(s)

SMITH ET AL.

Examiner

Jane J Rhee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 and 54-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 and 54-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-33,54-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weinstein et al. in view of Berdan (5350063) and in further view of Allwein et al. (5817387).

Weinstein et al. discloses a plurality of resilient fibrous insulation batt (col. 3 lines 34-38), the fibrous insulation batt having a length, a width and a thickness (col. 4 lines 3-4), the fibrous insulation batt having a first major surface and a second major surface (col. 4 lines 11-12), the precut fibrous insulation batt having a plurality of longitudinally extending batt sections (figure 1 number 20) formed in precut fibrous insulation batt by a plurality of longitudinally extending cut means (col. 5 lines 50-51) spaced inwardly from lateral edges of the precut fibrous insulation batt and located intermediate the batt sections of the precut fibrous insulation batt (figure 1 number 20), each of the cut means being closed to prevent a formation of thermal bridges in the direction of the thickness of the precut fibrous insulation batt (col. 6 line 3), the batt sections being separably joined to adjacent batt sections by separable connector means, extending along the length of the precut fibrous insulation batt (figure 1 number 20), the fibrous insulation batt being between about 9 inches and 25 inches in width (col. 4 lines 19) and

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successive batt sections of the batt sections of the precut fibrous insulation batt having widths such that, by separating at least one batt section from the pre-cut fibrous insulation batt, an integral batt can be formed having any of a series of selected widths that range from the width of about 1 to 3 inches to a greater width less than the width of the precut fibrous insulation batt and that differ in width in increments that are between about 1 inch and about 4 inches in width (col. 4 lines 19-21). Weinstein et al. discloses that the pre cut fibrous insulation batt is about 15 inches in width and the and the successive batt section of the batt sections of the precut fibrous insulation batt have widths of about 2 and a half, 4, 4, and 4 and a half inches (col. 4 lines 19-21).

Weinstein et al. discloses a facing sheet that overlies a major surface of the fibrous insulation batt and is bonded to the major surface of the fibrous insulation batt, and the facing sheet has a separable means therein extending for the length of the fibrous insulation batt (col. 5 lines 1-7). Weinstein et al. discloses that the separable means of the facing sheet is perforated line in the facing sheet (col. 5 lines 16). Weinstein et al. discloses that the perforation of the perforated line are filled with a bonding agent that bonds the facing sheet to the major surface of the resilient fibrous insulation batt to close the perforations so that the facing sheet functions as a vapor barrier (col. 5 lines 65-col. 6 lines 1-5). Weinstein et al. discloses that the successive batt sections have widths such that an integral batt can be formed having any of a series of selected widths that differ in width predominately in about 1 to about 2 inch increments (col. 4 lines 20-21). Weinstein et al. discloses that the separable connector means are formed in the precut fibrous insulation batts by partial cuts in the precut fibrous insulation batts,

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intermediate adjacent batt section of the precut fibrous insulation batt, that do not completely sever the batt between the adjacent batt section and the partial cuts are closed to prevent the formation of thermal bridges by the resilience of the precut fibrous insulation batt (col. 5 lines 50-61 and col. 6 lines 3). Weinstein et al. teaches that the length of each of the resilient fibrous insulation batts is at least 46 inches (col. 4 lines 7-8) and that the thickness of the fibrous insulation batts is at least 3 inches (col. 3 lines 65-67). Weinstein et al. discloses precut fibrous batt with a width of 15 inches and the width of batt sections of 3-6 inches (col. 4 lines 19-21)

Weinstein et al. fail to disclose a stack of fibrous insulation batt wherein the stack of fibrous insulation batt is being compressed in a direction perpendicular to the major surfaces of the insulation batts and is enveloped within a covering. Weinstein et al. fail to disclose that the resilient fibrous insulation batt includes uncut fibrous batts.

Weinstein et al. fail to disclose that between 20% to 70% of the resilient fibrous insulation batts are precut fibrous insulation batts and between 30% and 80% of the stack of resilient fibrous insulation batts being the uncut fibrous insulation batts.

Weinstein et al. fail to disclose that the fibrous insulation batts are about 23 inches in width and the batt sections have widths about 3-11 and a half inches. Weinstein et al. fail to disclose that the resilient glass fiber insulation batt has a density of each of the resilient fibrous insulation batts is between about 0.4 pounds/ft<sup>3</sup> and about 1.5 pounds/ft<sup>3</sup>. Weinstein et al. fail to disclose that the facing sheet is made of material selected from the group consisting of kraft paper, polymeric film, and foil scrim Kraft paper laminate. Weinstein et al. fail to disclose that each of the facing sheets has a first

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pair of tabs adjacent lateral edges of the first major surface of and extending along the length of the resilient fibrous insulation batt to which the facing sheet is bonded, and each of the facing sheets bonded to one of the precut fibrous insulation batts has additional pairs of tabs, at least substantially aligned with the separable connector means of and extending along the length of the precut fibrous insulating batt to which the facing sheet is bonded.

Berdan teaches a stack of fibrous insulation batt wherein the stack of fibrous insulation batt is being compressed in a direction perpendicular to the major surfaces of the insulation batts and is enveloped within a covering (figure 7 and figure 8) for the purpose of to enable the shipping of highly compressed package when can be broken down into smaller units with both the shipping package and the units themselves being capable of being cartwheeled by an individual installer or insulation contractor (col. 1 lines 56-61). Berdan teaches that the resilient fibrous insulation batts are between about 0.4 pounds /ft<sup>3</sup> and about 1.5 pounds/ft<sup>3</sup> (col. 2 lines 67) for the purpose of enabling it to be compressed during packaging (col. 2 lines 63-64). Berdan teaches that the facing sheet is made of material selected from the group consisting of kraft paper, polymeric film, and foil scrim Kraft paper laminate (col. 3 lines 6-9) for the purpose of holding the batts in compression (col. 3 lines 5-6).

Therefore, It would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to provide Weinstein et al. with the facing sheet made of a material selected from the group consisting of kraft paper, polymeric film, and

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foil scrim Kraft paper laminate in order to hold the batts in compression (col. 3 lines 5-6) as taught by Berdan.

Also, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to provide Weinstein et al. a stack of fibrous insulation batt wherein the stack of fibrous insulation batt is being compressed in a direction perpendicular to the major surfaces of the insulation batts and is enveloped within a covering in order to enable the shipping of highly compressed package when can be broken down into smaller units with both the shipping package and the units themselves being capable of being cartwheeled by an individual installer or insulation contractor (col. 1 lines 56-61) as taught by Berdan.

Furthermore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to provide Weinstein et al. with the resilient fibrous insulation batts that are between about 0.4 pounds /ft<sup>3</sup> and about 1.5 pounds/ft<sup>3</sup> in order to enable it to be compressed during packaging (col. 2 lines 63-64).

Weinstein et al. teaches that contractors seek to maintain the spacing of such framing members in these structures at standard distances for ease of construction and insulation of elongated cavities formed in these walls, ceilings, floors, and roofs, however frequently the walls, ceilings, floors and/or roofs of these structures include elongated cavities defined, at least in part by adjacent framing members which are spaced apart a nonstandard distance less than the standard distance between framing members (col. 1 lines 29-38) therefore, Weinstein et al. teaches precut fibrous batt to insulate various cavities of various nonstandard widths, less than a standard width (col.

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1 lines 43-44). It would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide both uncut and precut insulation batts for insulating elongated cavities of standard distances and nonstandard distances that are less than standard widths as taught by Weinsten et al. Also it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide between 30% and 80% of uncut insulation batts and between 20% and 70% of precut insulations batts depending on the amount of elongated cavities of standard distance and nonstandard distance are formed in the walls, ceilings, floors and/or roofs since Weinsten et al. teaches that it is common for 50% or more of the framing members in the exterior walls of these structures to be spaced apart at nonstandard distances that are less than the standard spacing for such framing members (col. 1 lines 39-42).

It has been held that a recitation with respect to the manner in which a claimed article is intended to be employed such as "for holding the precut fibrous insulation batt together for handling and each of the separable connector means being separable by hand to separate adjacent batt sections from each other whereby the precut fibrous insulation batt can be handled as a unit for insulating a cavity having a width about equal to the width of the precut fibrous insulation batt or separated by and into batt section at one of more of the separable connector means for insulating a cavity having a lesser width" does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham* 2 uSPQ2d 1647 (1987).



Allwein et al. teaches that each of the facing sheets has a first pair of tabs adjacent lateral edges of the first major surface of and extending along the length of the resilient fibrous insulation batt (figure 2 number 32 and 36) to which the facing sheet is bonded, and each of the facing sheets bonded to one of the precut fibrous insulation batts has additional pairs of tabs, at least substantially aligned with the separable connector means (figure 1 number 42) of and extending along the length of the precut fibrous insulating batt to which the facing sheet is bonded for the purpose of sealing the facing material together and reducing the likelihood of the dust and fibers becoming a possible irritant to the workers handling and installing the insulation assemblies (col. 4 lines 35-50).

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to provide Weinstein et al. and Berdan with each of the facing sheets that has a first pair of tabs adjacent lateral edges of the first major surface of and extending along the length of the resilient fibrous insulation batt to which the facing sheet is bonded, and each of the facing sheets bonded to one of the precut fibrous insulation batts that has additional pairs of tabs, at least substantially aligned with the separable connector means of and extending along the length of the precut fibrous insulating batt to which the facing sheet is bonded in order to seal the facing material together and reducing the likelihood of the dust and fibers becoming a possible irritant to the workers handling and installing the insulation assemblies (col. 4 lines 35-50) as taught by Allwein et al.

***Response to Arguments***

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2. Applicant's arguments with respect to claims 1-33 and 54-63 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 703-605-4959. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for


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the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Jane Rhee  
September 10, 2003



HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
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9/24/03